

## **FINDING OF EMERGENCY**

The State Allocation Board (SAB) finds that an emergency exists, and that the proposed regulations are necessary for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

### **Specific Facts Showing the Need for Immediate Action**

The proposed emergency regulatory amendments to the School Facility Program (SFP) Regulations expand the types of projects eligible to participate in priority funding rounds. Charter School Facility Program (CSFP) projects may apply for advance release of design and site acquisition funds, and Critically Overcrowded School (COS) Facilities Program projects may apply for advance release of environmental hardship site acquisition funds. Under the amendments, advance funding may be expedited for 13 CSFP approved unfunded projects totaling \$57.8 million, and for eight COS approved unfunded projects totaling \$129.4 million.

The proposed emergency regulatory amendments will help carry out the Legislative intent for the above Programs set forth in:

- Assembly Bill (AB) 14, Chapter 935, Statutes of 2002;
- Senate Bill (SB) 15, Chapter 587, Statutes of 2004;
- AB 127, Chapter 35, Statutes of 2006; and
- AB 16, Chapter 33, Statutes of 2002.

The amendments will help expedite putting “reserved” State bond funds into active apportionments to facilitate site acquisition, design, and environmental compliance for school projects, and help to sustain jobs in these preparatory phases of school construction.

Without the proposed amendments, these projects may not request these advance funds under the current priority funding round process. School districts and charter schools with such projects would be highly disadvantaged by having to wait their place in line for funding behind projects that are not construction ready, or to secure complete local funding before being able to request the State’s share of total project costs.

Two emergency rulemaking actions approving priority funding rounds have been approved by the Office of Administrative Law (OAL File No. 2010-0617-06E with text clarification in OAL File No. 2010-0701-01E; and OAL File No. 2010-1019-01E). These priority funding rounds have helped to create jobs and stimulate the economy by re-prioritizing school bond apportionments for school construction projects that are ready to submit their fund release requests quickly and proceed to construction. Through this authority, the SAB was able to fund \$408.14 million for “construction-ready” projects at its August 4, 2010 meeting. In addition, following the Treasurer’s successful November 2010 sale of Build America and taxable bonds, the SAB was able to fund another \$1.438 billion in construction projects at its December 15, 2010 meeting.

**California’s Fiscal Crisis Impact on State Bond Funds.** Prior to December 17, 2008, the process for making State apportionments and providing fund releases for the School Facility Program (SFP) was relatively simple. Fund release requests were accommodated on a regular basis due to the ability to borrow cash from the State’s Pooled Money Investment Account (PMIA) in advance of bond sales. On December 17, 2008, the State’s Pooled Money Investment Board (PMIB) took action to temporarily halt disbursing cash from the State’s PMIA for capital projects, including school construction projects, because of the State’s financial situation.

In addition, on December 18, 2008, the Department of Finance issued Budget Letter #33 that directed all State entities that have expenditure control and oversight of General Obligation Bond programs to cease authorizing any new grants for bond projects. Budget Letter #33 also stated that no future AB 55 loans or higher amount of AB 55 loan renewals would be approved until the budget crisis was resolved in a manner sufficient to allow the State to resume issuing bonds. Subsequent Department of Finance Budget Letters further reinforced this action. Due to the condition of the PMIA, the traditional process of funding school construction projects from AB 55 loans could not continue. Thereafter, school construction projects had to be funded on a cash basis by upfront proceeds of future General Obligation Bond sales.

The PMIB's action and Department of Finance Budget Letters placed the Office of Public School Construction (OPSC) on notice that fund release requests would not be able to proceed, and impeded the SAB's ability to make State apportionments even though there was available bonding authority. Due to the unprecedented circumstance of the State's inability to provide cash for projects that were supported by bonding authority, the SAB took multiple actions, commencing in January 2009, that ensured regulations and processes were adjusted in an attempt to minimize the impact to school district projects. These actions included:

- Emergency Regulations declaring prior SAB-approved apportionments inactive until cash became available;
- The creation of an Unfunded List for approved projects; and
- Prompt action to make State apportionments and/or reactivate unfunded approvals once cash became available.

Prior to priority funding rounds, State apportionments were made through regulation and were based on the date a complete application was received and placed on the SAB's Unfunded List, and the cash availability due to bond sales. That system did not give consideration as to whether or not the school district is actually ready or able to proceed with the construction of the project. The State bond funds available for an approved State apportionment could remain in an account for 18 months while the school district readied the project to move forward. The proposed regulations are vital to converting even more "reserved" State bond funds into active apportionments, thereby stimulating the economy and creating jobs.

The proposed amendments also establish a new timeline of 180 calendar days for school districts and charter schools to file their request for fund release, Form SAB 50-05, for advance release of site acquisition funds from a Preliminary Charter School Apportionment. The current timeline for priority funding round fund release submittals is only 90 days. It is crucial that the proposed advance site acquisition funding for charter schools be allowed this time for such activities as site selection, appraisal, California Department of Education approval, environmental approval, funding process, financial soundness review and approval, and signing Charter School Agreements. Emergency approval is necessary to provide equity and give charter schools equal recognition with school districts for participation in priority funding rounds.

CSFP Program. Three legislative acts and voter approvals established and funded the program with a cumulative total of \$900 million in bond funds:

- The CSFP was established by Assembly Bill (AB) 14, Chapter 935, Statutes of 2002, and was funded with \$100 million through the passage of Proposition 47.
- Senate Bill 15, Chapter 587, Statutes of 2004, authorized an additional \$300 million which was funded by the passage of Proposition 55.

- AB 127, Chapter 35, Statutes of 2006, authorized an additional \$500 million which was funded through the passage of Proposition 1D at the November 7, 2006 General Election.

Without the amendments, CSFP projects may not participate in priority funding rounds to apply for advance release of design and site acquisition funds from Preliminary Charter School Apportionments. Therefore, the projects would remain in an unperfected status and the funding could not be utilized until sometime in the future.

COS Program. The COS Program was established by Assembly Bill 16, Chapter 33, Statutes of 2002, to provide funding to relieve overcrowding on severely impacted sites. Proposition 47 (the Kindergarten-University Public Education Facilities Bond Act of 2002) authorized \$1.7 billion for this program, which was passed by voters at the November 2002 general election. Proposition 55 (the Kindergarten-University Public Education Facilities Bond Act of 2004) authorized \$2.44 billion for this program, which was passed by voters at the March 2004 general election.

Without the amendments, COS projects may not participate in priority funding rounds to apply for advance release of environmental hardship site acquisition funds from Preliminary Apportionments.

### **Authority and Reference Citations**

Authority: Section 17070.35 of the Education Code.

Reference: Sections 17072.12, 17072.30, 17074.16, 17076.10, 17077.40, 17077.42 and 17077.45 of the Education Code.

### **Informative Digest/Policy Overview Statement**

Senate Bill 50, Chapter 407, Statutes of 1998, established the School Facility Program which streamlined funding processes, eliminated State oversight, and made school districts more accountable for their projects. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were adopted by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

A summary of the proposed emergency regulatory amendments is as follows:

Existing Regulation Section 1859.90.2, "Priority Funding Round Process," authorizes the SAB to establish 30-calendar day application filing periods to distribute available State school bond funds to school districts with approved unfunded apportionments. To participate, school districts must agree to submit their Form SAB 50-05, "Fund

Release Authorization," with an original signature, to be physically possessed by the OPSC within 90 calendar days of the Board's approval of the apportionment.

The proposed emergency regulatory amendments:

- authorize projects under the CSFP to apply for advance release of design funds from a Preliminary Charter School Apportionment, subject to the existing 90 calendar day timeline to submit the request for fund release, Form SAB 50-05;
- authorize projects under the CSFP to apply for advance release of site acquisition funds from a Preliminary Charter School Apportionment, subject to a new timeline of 180 calendar days for school districts and charter schools to file their request for fund

- a) requests to convert the advance release of funds to an approved advance release of funds,
  - b) concurs with the 180 calendar day timeline to submit the fund release request,
  - c) acknowledges the participant's requirement to submit a valid, signed Form SAB 50-05 to be physically received by the OPSC within the 180 calendar day time limit, and failure to do so will result in the rescission of the approved advance release of funds request without further Board action, and
  - d) acknowledges that the participant must provide evidence of entering into the Charter School Agreements within 90 calendar days of the approval of the advance release of funds request, and failure to do so will result in the rescission of the approval without further Board action.
- authorize projects under the Critically Overcrowded School (COS) Facilities Program to apply for advance release of environmental hardship site acquisition funds subject to the existing 90 calendar day timeline to submit the request for fund release, Form SAB 50-05;
  - add "charter schools" to the entities which must be given advance public notice of a SAB meeting at which a priority funding round would be established;
  - add "charter schools" as eligible for priority funding rounds by submitting a request to participate within 30 calendar days;
  - clarify that all requests to participate must be physically received by the OPSC by the 30th calendar day to be valid;
  - add "charter schools" to the requirement for participants to file their request for fund release, Form SAB 50-05;
  - clarify that all submittals of fund release requests, Form SAB 50-05, must be physically received by the OPSC within the time periods specified in this regulation section; and
  - clarify that "rescinded" and "rescission" as used in this section apply to apportionments and "approved advance release of funds requests."

### **Mandate on Local Agencies or School Districts**

The Executive Officer of the SAB has determined that the proposed emergency regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed emergency regulations.

### **Cost Estimate**

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact that might result from the proposed emergency regulatory action and it has been determined that:

- There will be no costs or savings to the State.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.